IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1463 OF 2005

M/s.Panchasar Leasing & Investment Ltd.
& ors. Petitioners

vs.

Mr.N.O.Mehta & ors. Respondents

Mr.Madhav J. Jamdar for the petitioners.

Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.Y.M.Choudhari
for respondent no.6.

Mr.J.Reis, Sr.Counsel with Mr.Sean Wassoodeo for
respondent no.7.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 13th October, 2006

P.C.

The petitioners have invoked Article 226 of the Constitution of India and seek to challenge the judgment and order dated 1.4.2005 passed by the learned Joint Charity Commissioner, Maharashtra State, Mumbai whereby an application under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 (the BPT Act) has been allowed and a permission/sanction to alienate the trust property of the Trust "Dr.Y.N.Ajinkya East Bombay Lion's Hospital Society Trust" (the Trust) has been granted. By the same order the objections filed by petitioners 1, 2, 3 and respondent no.7 were rejected.

2. The operative part of the impugned order is as

under:

"1. Application is allowed.

2. Objections are rejected.

3. Sanction is hereby accorded under Section 36(1) (a) of the Bombay Public Trusts Act, 1950 to "Dr.Y.N.Ajinkya East Bombay Lion's Hospital society Trust" bearing P.T.R. No.E-5293(Mumbai) to sale the property bearing C.S.No.410 of Malabar and Cumballa Hill Division bearing cess No. /Municipal Ward No.2796, Street No.77, 79, situated at the junction of N.S.Patkar Marg and Pandita Ramabai Road, Gaondevi, Mumbai of the area admeasuring about the 1662 sq.yds. equivalent to 1389.43 sq.mtrs. along with structure standing therein on 'as is where is' basis for consideration of Rs.2,00,00,000/- (Rupees Two Crores only) and other additional benefits in favour of m/s.Dharti Properties Pvt.Ltd., Mumbai subject to the rights of the existing tenants on the terms and conditions settled by the trustees for sale of property subject to further following conditions.

a) This order shall remain valid for the one year from today.

b) All expenses registration, stamp duty etc. shall be borne by the purchaser.

c) The Agreement-cum-Memorandum of Understanding (Exhibit-17) shall form part of this order and parties to follow the terms can conditions mentioned therein scrupulously.

d) The trustees shall invest the consideration amount in any Scheduled Bank or in Government Approved Securities in long term fixed deposit and the interest amount thereon shall be utilised for the objects of the Trust.

e) This order is subject to any provisions of restrictions of any Law in force. f) Necessary Change Report after sale transaction should be submitted under Section 22 of the Bombay Public Trusts Act, 1950. "

3. The trust property in question is with a structure

occupied by 13 tenants. On 12.12.2003 the Trustees resolved to alienate the said property along with the rights of the existing tenants on "as is where is basis" and subject to the sanction as contemplated under BPT Act.

4. The Trustees, on 8.3.2004 in Daily Mumbai Samachar and on 9.3.2004 in Free Press Journal issued the public notices accordingly. The contents of the notice dated 9.3.2004 are as under:

NOTICE

. Notice is hereby given one of our clients propose to sale their immovable property situated at Pandita Ramabai Road and Nyayamurthi S.P.Marg, Gamdevi, Bombay, Hughes Road, Off. Tata Mercedis Show Room, Next to Dalvi Hospital and described in the Schedule hereunder written. Persons interested in purchase of the said property may contact the undersigned at their Office mentioned below for taking inspection of the relevant documents including the Deed of Lease dated 22nd August, 1911 from the Improvement Trust of the city of Bombay under which the property is held by our clients for a period of nine hundred ninety nine years, on the terms mentioned therein. The offers should be sent to the undersigned in writing within the period of 15 days from the publication of this notice.

. Please note that

(a) Our clients shall not be bound to accept any offer which may be sent by the prospective purchasers and

(b) the Sale shall be subject to the sanction of the Charity Commissioner, State of Maharashtra, Bombay.

(c) the property will be sold on "as is where

is" basis and subject to existing Tenants and Occupants."

5. The Trustees had received offers from six prospective buyers which include respondent no.6-Dharti Properties Private Limited and petitioner no.3-M/s.Shah Associates. The Trustees as per the advertisement allowed the inspection of relevant documents and provided such prospective buyers the terms and conditions of tender in respect of the property. The said terms and conditions include a clause that the tenderer shall along with his tender, deposit a sum equivalent to 10% of the offer by Demand Draft with specific condition that "no tender which is not accompanied by such a draft will be considered by the Trustee". It was further mentioned that the offer must include a lumpsum offer for outright purchase of the property on "as is where is basis". The other conditions were that the offer must be in the name of the party who is to purchase the property; no brokerage would be paid by the Trust; the Trustee shall in their absolute discretion reject any or all offers without assigning any reason whatsoever.

6. Respondent no.6 in whose favour the Charity Commissioner has granted the sanction, initially submitted the offer on 23.3.2004 of Rs.1,05,00,000/- (Rupees one crore five lacs only) which was later on

enhanced upto Rs.1,55,55,501/- by a letter dated 27.4.2004 and lastly revised upto Rs.2,00,00,000/-. Petitioner no.3 submitted offer on 19.3.2004 of Rs.31,11,111/-, with only draft of earnest money of 10% amount. Their offer was open for negotiations. Respondent no.7 had never made any offer at any time including before the Charity Commissioner.

7. On 27.4.2004 considering the highest offer of respondent no.6 the Trust have considered the said offer with further direction to enhance their offer. Respondent no.6 has enhanced the offer upto Rs.2,00,00,000/-, the Trustees have resolved on 14.5.2004 to accept the said offer. Respondent no.6 has also agreed to : (1) The Trust shall have vacant possession of Flat No.5 excluding Room No.2 and 3, of Flat No.5 on 2nd Floor., (2) The Purchaser shall give minimum 66% of Carpet area that in the possession of the Trust on the 1st floor and (3) The Hoardings Income of Rs.3,60,000/- per annum in advance shall be received by the trust till commencement of Construction of the Building by the purchasers. It has also been agreed to alienate the property subject to the rights of the existing tenants.

8. The Trust/Trustees therefore filed an application on 28.12.2004 for necessary sanction as contemplated under

Section 36(1)(a) of the BPT Act. Petitioner no.1 alleged to be a sister concern of petitioner no.3-M/s.Shah Associates, filed an objection some time in March 2005, before the Charity Commissioner. Petitioner nos.1 and 2 had never submitted any offer before the Trustee as per the advertisement at any point of time. The offer was made only by petitioner no.3. Petitioner No.1 in the application alleged that the Trustees have not supplied the tender form to them. The objectors-petitioners 1 and 2 contended in the objection application that they would enhance the offer to Rs.2,11,11,111/- and ready to deposit 10% of that amount to show their bonafides. They were also ready and willing to perform their terms and conditions as prescribed by the Trust. Respondent no.7 by letter dated 21.8.2004 on the letterhead of M.D.Construction Co. offered to purchase the property at the price of Rs.2,50,00,000/0 only. They have also raised an objection that non-receipt of application forms and terms and conditions, as alleged to have been refused by the Trustees. There was no such offer submitted by M/s.M.D.Construction Co. at the earlier point of time. Respondent no.7 in his individual capacity had also not made an offer at the time when the initial advertisement was issued. There were six objections before Charity Commissioner.

9. The Charity Commissioner after considering the rival contentions as raised by the parties including all objectors, held that there is a compelling necessity and a justification to alienate the property in question; the proposed alienation is fair and in the interest of trust and further the price quoted by the applicants is adequate and reasonable. The Charity Commissioner ultimately has granted the sanction in favour of respondent no.6 by a reasoned order. Respondent No.7 has not challenged that under.

10. Based on the impugned order of sanction, the Trust has executed the covenants in favour of respondent no.6 now known as "Rohan Developers Private Limited". Respondent no.6 has already paid the entire consideration to the Trust. The said conveyance has been registered on 14.12.2005. The name of this respondent has already been entered in the P.R.Card, as well as, in the Index II as contemplated under the BPT Act.

11. The petitioners lodged the present petition on 26.4.2005. The same was listed for an admission on 19.11.2005. The notice was made returnable on 19.12.2005. The Court has observed that "Notice to indicate that the petition will be finally disposed of on that day.". There was no ad-interim order granted by

the Court while issuing notice. On 4.9.2006 this Court after hearing all the parties including respondent no.7 has passed the following order:

> ". The respondent no.7 claims that he is willing to offer Rs.10 crores for the property which has been sold at Rs.2 crores.
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> 2. The respondent no.7 on or before 15th September, 2006 to deposit a sum of Rs. 2 crores with the Prothonotary of this Court or furnish bank guarantee of the same amount.
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> 3. Stand over to 15th September, 2006."

Respondent no.7 has accordingly deposited a sum of Rs.2 crores.

12. While passing the order on 4.9.2006 the offer of Rs.10 crores for the property made by respondent no.7 prima facie impressed us and to consider whether the offer was bonafide we had made the order for deposit. But after considering the affidavit filed by respondent no.6 dated 3.10.2006, we find that the offer of respondent no.7 is not bonafide. Apart from the fact that such offer was not made before the Trustee at any earlier point of time in the name of M/s.M.D.Construction Co. of which respondent no.7 claim to be a proprietor. Before the Charity Commissioner also the said M/s.M.D.Construction Co. on 21.8.2004 had offered Rs.2,50,00,000/- only. There was no such offer of Rs.10 crores made in writing before the Charity commissioner. The said offer has been made in this

court after lapse of about one and half years, when admittedly the said property is no longer the property of the Trust as it has been already transferred pursuant to the sanction order dated 1.4.2005. Considering the document produced by Respondent no.6, it is apparent that Respondent No.7 is a mere speculator for profit.

13. As averred in the affidavit by respondent no.6 a Memorandum of Understanding dated 1.9.2006 between the said M/s.M.D.Construction Company of respondent no.7 with M/s.Brahma Developers Private Limited placed on record which reflects the various clauses and conditions entered into between the parties which are as under:

> "c) One of the other parties who had bid for purchase of the said property namely M/s.Panchasar Leasing and Investment Ltd. had filed Writ Petition No.1463 of 2005 in the High Court at Mumbai and had interalia sought reliefs that the order dated 1st April 2005 passed by the learned Joint Charity Commissioner, Maharashtra State, Mumbai accepting the offer of Messrs.Dharti Properties Private Limited be quashed and set aside.
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> d) The party of the first part had contended before the Hon. High Court that the party of the first part was willing to offer a sum of Rs.10 crores for the property which was sold for Rs. Two crores fifty lakhs only. The Honourable Court had directed the party of the first part to deposit a sum of Rs.Two crores with the Prothonotary and Senior Master, High Court or furnish bank guarantee of the same amount on or before 15th September, 2006."

14. In totality after considering these clauses it appears that the offer of respondent no.7 was not made

bonafide. The deal, as referred above, through MOU came into existence on 1.9.2006 pending the present writ petition. As per the said MOU, the said M/s.Brahma Developers Private Limited assisted the respondent no.7, to deposit the amount of Rs.2 crores in the court. The whole MOU shows that respondent no.7 along with third person wants to earn profit out of the said transaction by anticipating the order of sanction from the court in their favour. The whole agreement was based on speculation and anticipation. The parties as referred to above had agreed to share the ratio of profit. They even agreed to settle the matter even with M/s.Dharti Properties Private Limited (respondent no.6).

15. After considering this conduct of respondent no.7 and/or M/s.M.D.Construction Company, we find the offer as made by respondent no.7 before the Court is not bonafide and genuine. Respondent no.7 did not even challenge the order of the Charity Commissioner. The amount deposited by him in the Court is based on a speculative treatment. The sanction has been granted by the Charity Commissioner on 1.4.2005. The conveyance has been entered into on 14.12.2005. The offer at this late stage is therefore no reason to set aside the impugned order and judgment dated 1.4.2005 and/or the conveyance dated 14.12.2005 in question.

16. The Charity Commissioner has considered the objections of all the objectors. The offer of M/s.Sanghvi Realty Private Limited was not in accordance with the terms and conditions and also no demand draft was annexed to the offer. The petitioner M/s.Shah & Associates did not submit any demand draft. The Charity Commissioner rejected after considering the papers and submission made by the parties. Petitioner no.1's claim was rejected as the said company did not submit its offer before the Trustees, as invited. The claim of being of sister concern of M/s.Shah Associates and the offer was made in his individual capacity. The offer was of Rs.31,11,111/- without annexing any demand draft. Therefore was rightly rejected as it was not fulfilling the terms at the relevant time. Though, Nikhil Shah for petitioner no.1 submitted a Pay Order of Rs.2,11,11,111/- but at the belated stage and being an un-invited offerer, the Charity Commissioner has rejected the same.

17. The Trustees have accepted the bonafide offer of respondent no.6, having faith upon the said party as they have also agreed to settle their tenants and/or to rehabilitate them and agreed to meet the other conditions. The other conditions have also been accepted and agreed by respondent no.6. The said offer therefore can be said to be fair and reasonable as found

by the Trustees and by the Charity Commissioner. Therefore, considering the facts and circumstances there was nothing wrong in rejecting the offer of petitioner nos.1 and 2.

. The issue whether those who make an offer before the Charity Commissioner and whether they can file a petition is a subject matter of a reference to the Full Court. Matter has been heard and judgment reserved. We proceed on the basis that they could prefer a petition.

18. A Division Bench of this Court in **Shri Mahadeo Deosthan, Wadali & ors. v. Joint Charity Commissioner, Nagpur & ors., 1989 Mh.L.J.269,** while considering the power of Charity Commissioner under Section 36(2) of revocation of sanction granted under Section 36(1) of the BPT Act, held that once a sanction is granted, the said sanction merges itself in the sale deed, the said property loses the character as that of a Trust property. The power of revocation has to be exercised only qua the property of the Trust and not after the sale deed. In the present case, there is no case made out for a revocation of the sanction as contemplated under Section 36 (2) or (3) of the BPT Act. The facts and circumstances as noted above, in no way can be said to be a case of fraud or a misrepresentation. In **2006(1) Bom. C.R. 133, Stella A.Machado & ors. v.**

A.H.Wadia Charity Trust & ors, a Division of this Court has confirmed the same view and dismissed the same challenge. The reasons given by the Charity commissioner while accepting the case of respondent no.6 appears to be fair and reasonable in view of the various conditions of transaction, apart from the monetary consideration of Rs.2 crores. Respondent no.6 has admittedly purchased the said property on "as is where is basis" with existing 13 tenants in the property in question apart, from the other clauses as reproduced above.

19. Respondent no.7 admittedly has not made any challenge to the impugned order of sanction and/or the sale deed executed in favour of respondent no.6 at any point of time. The challenge is made only by the petitioners. Respondent no.7 by his reply to the affidavit in reply of respondent no.6 has now raised various disputed questions of facts, which cannot be gone into for the first time in the present writ petition. These subsequent events, even otherwise in the facts and circumstances of the case, are not sufficient to interfere with the impugned order, as well as, the covenants executed between the Trust and respondent no.6. There is no question of granting any sanction in such cases in favour of respondent no.7 merely because he has made offer of Rs.10 crores for the

first time in High Court. This is also no ground to interfere with the transaction sanctioned by the Charity Commissioner at the relevant time, based upon the material. Third party rights have now been created. Therefore at this belated stage, no case is made out by the petitioners for us to interfere with the impugned orders and actions.

20. Considering the above, petition is dismissed. However, the sum of Rs.2 crores (Rupees two crores) deposited by respondent no.7 be returned to respondent no.7 on production of certified copy of this order.

21. The Charity Commissioner is directed to return the amount deposited by the petitioner on production of the certified copy of this order.

22. With the above observations, petition is dismissed,. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)